

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TRACY GARNER and DALE GARNER : CIVIL ACTION.

vs. :

TREDYFFRIN TOWNSHIP : NO. 96-1351
POLICE OFFICER LAWRENCE :
A. MEOLI; and :
POLICE OFFICER GERALD :
M. MCTEAR :

ORDER AND MEMORANDUM

AND NOW, to wit, this 7th day of July, 1997, upon consideration of the Motion of Defendant Tredyffrin Township, Defendant Lawrence A. Meoli and Defendant Gerald M. McTear for Partial Summary Judgment and the Accompanying Memorandum (Document No. 23, filed March 17, 1997), the Response by Plaintiff Tracy Garner and Plaintiff Dale Garner to Motion for Partial Summary Judgment of Defendants Tredyffrin Township, Lawrence A. Meoli and Gerald M. McTear (Document NO. 27, filed April 21, 1997), the Supplemental Memorandum of Law of Defendants, Tredyffrin Township, Officer Lawrence H. Meoli and Officer Gerald M. McTear in Support of Their Motion for Partial Summary Judgment (Document No. 29, filed May 13, 1997), and the Supplemental Memorandum of Law of Plaintiff Tracer Garner and Plaintiff Dale Garner in Opposition to Defendants' Motion for Partial Summary Judgment (Document No. 30, filed May 22, 1997), **IT IS ORDERED** that the Motion of Defendants, Tredyffrin Township, Lawrence A. Meoli and Gerald M. McTear, for

Partial Summary Judgment **IS GRANTED IN PART AND DENIED IN PART** as follows:

1. Defendants' Motion for Partial Summary Judgment is **GRANTED** with respect to Counts IV, VI and VII of the Amended Complaint;

2. Defendants' Motion for Partial Summary Judgment is **GRANTED** with respect to Count VIII of the Amended Complaint;

3. Defendants' Motion for Partial Summary Judgment is **GRANTED** with respect to those parts of Counts II and III of the Amended Complaint which allege claims against Officer Meoli and Officer McTear in their official capacities;

4. Defendants' Motion for Partial Summary Judgment is **DENIED** with respect to those parts of Counts II and III of the Amended Complaint which allege claims against Officer Meoli and Officer McTear in their individual capacities; and,

5. Defendants' Motion for Partial Summary Judgment is **DENIED** with respect to Count V of the Amended Complaint.

The rulings of the Court are based on the following:

1. In Counts IV, VI and VII of the Amended Complaint plaintiff, Tracy Garner, alleges claims against Tredyffrin Township ("Township") for malicious prosecution, false imprisonment, and assault and battery, respectively. However, the Township is immune from liability for such intentional tort claims. Under 42 Pa.C.S.A. § 8541, the Township is immune from liability unless an exception provided in § 8542 is applicable. No exceptions to such immunity provided in § 8542 are applicable in this case. See Talley v. Trautman, No. 96-5190, 1997 WL 135705 (E.D. Pa. March 13,

1997) (finding municipal corporation immune from intentional torts, specifically assault and battery).

2. In Count VIII of the Amended Complaint plaintiff, Dale Garner, asserts a claim for loss of consortium. No defendant is liable for such a claim because it is derivative of plaintiff, Tracy Garner's, state tort claims as to which summary judgment has been granted. See Davis v. Lower Merion Township, No. 94-7138, 1995 WL 311805, *4 (E.D. Pa. May 18, 1995); see also Quitmeyer v. SEPTA, 740 F. Supp. 363, 370 (E.D. Pa. 1990) (finding no authority to permit spousal recovery for loss of consortium based on violations of other spouse's civil rights).

3. Counts II and III of the Amended Complaint assert claims against Officers Meoli and McTear pursuant to 42 U.S.C. § 1983 in their individual and official capacities for false arrest and imprisonment (Count II) and for initiation and pursuit of prosecution without probable cause (Count III). An individual capacity suit under § 1983 requires proof of a deprivation of a federally protected right by an individual acting under color of state law. On the present state of the record, it appears to the Court that the parties have raised genuine issues of material fact as to such claims.

Defendants Meoli and McTear contend that they are entitled to summary judgment on grounds of qualified immunity. See Harlow v. Fitzgerald, 457 U.S. 800 (1982). Although "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not

violate clearly established statutory or constitutional rights of which a reasonable person would have known," Id. at 818, such a qualified immunity defense is not ripe on the present state of the record because the evidence presented raises genuine issues of material fact with respect to whether the conduct of Officers Meoli and McTear violated clearly established rights of which a reasonable person would have known. See Karnes v. Skrutski, 62 F.3d 485, 499 & n.13 (3d Cir. 1995) (recognizing that where there are genuine issues of material fact qualified immunity defense must be submitted to jury although such defense is designed to avoid litigation); see also Grant v. City of Pittsburgh, 98 F.3d 116 (3d Cir. 1996).

Plaintiffs also sued defendants Meoli and McTear in their official capacities. It has long been held that a suit against a municipal officer in his official capacity is the equivalent of a suit against the municipality. See Kent v. Graham, 473 U.S. 159, 165 (1985). As such, the Court granted Defendants' Motion for Partial Summary Judgment with respect to Counts II and III against defendants Meoli and McTear in their official capacities.

4. In Count V of the Amended Complaint, plaintiff, Tracy Garner, asserts a claim against the Township under § 1983 based upon the actions of the Township Police Department. That claim is based on Monell v. New York City Department of Social Servs., 436 U.S. 658 (1978), in which the Supreme Court held that a municipality can be liable under § 1983 if the plaintiff establishes a municipal "policy" or "custom" of deliberate

indifference which was the moving force causing a deprivation of a plaintiff's constitutional rights. See also Bd. of County Com'rs of Bryan County, Okl. v. Brown, 117 S. Ct. 1382, 1388 (1997) (citing Monell, 436 U.S. at 694). Thus, in order to prevail on a Monell claim at trial, plaintiff must establish (1) a policy or custom of deliberate indifference to the deprivation of a federal right, (2) the deprivation of a federal right and (3) a nexus between the two.

Plaintiff, Tracy Garner, asserted in the Amended Complaint that the Township had a custom or policy of failing to discipline supervise and adequately train the members of its Police Department. The Court notes that in Plaintiffs' Response to Defendants' Motion, plaintiff appeared to narrow his theory, arguing that the evidence pointed to the Township's custom of inadequately investigating, evaluating and responding to complaints concerning police officers.

Plaintiff has presented evidence of the investigation procedures of the Police Department, including an expert report of Dr. Paul McCauley, prior citizen complaints against defendant Meoli and other officers, and the investigation of the incident which is the basis of the Amended Complaint. While at times lacking specificity, viewed in the light most favorable to the plaintiff, the non-moving party, see Adickes v. S.H. Kress and Co., 398 U.S. 144, 159 (1970) (quoting United States v. Diebold, 369 U.S. 654. 655 (1962)), the evidence presented raises genuine issues of material fact regarding a custom or policy of deliberate

indifference to the deprivation of constitutional rights of citizens. Compare Beck v. City of Pittsburgh, 89 F.3d 966 (3d Cir. 1996), cert. denied, 117 S. Ct. 1086 (1997); Torres v. Kuzniasz, 936 F. Supp. 1201, 1206 (D.N.J. 1996).

Regarding causation, the third element, defendants maintain that plaintiff has not adduced sufficient facts to raise a genuine issue of material fact in so much as he has not documented a causal link between an acquiescence in a Township custom of similar unlawful conduct, independent of the investigation of conduct which is the subject of this action, and plaintiff's constitutional injury. See Defendants' Supplemental Memorandum of Law at 18, 20. In addressing causation, the Third Circuit has observed that plaintiffs must establish "that policymakers were aware of similar unlawful conduct in the past, but failed to take precautions against future violations, and that this failure, at least in part, led to their injury." Bielewicz v. Dubinon, 915 F.2d 845, 851 (3d Cir. 1990); see also Brown, 117 S. Ct. at 1392-93 & n.1 (explaining that there must be a link between the policymaker's alleged deliberate indifference, in that case, inadequate background scrutiny of the particular officer hired, and the particular constitutional violation alleged). In an analogous case, a court in this District explained that "in order for Plaintiff to succeed on his Monell claim, he must produce evidence upon which a reasonable juror could conclude not only that the Department's internal investigation procedures were inadequate to protect civilians from police misuse of force, but also that these

inadequate procedures contributed to the alleged constitutional injury." See Whichard v. Cheltenham Township, No. 95-3969, 1996 WL 502281, *5 (E.D. Pa. Aug. 29, 1996) (citing Bielewicz, 915 F.2d at 850). On the current state of the record, again viewing the evidence in the light most favorable to the plaintiff, the Court cannot conclude that there are no genuine issues of material fact regarding the existence of the required nexus between the custom or policy of deliberate indifference and the alleged injury.

IT IS FURTHER ORDERED that the denial of Defendants' Motion for Partial Summary Judgment with respect to Counts II, III and V, is **WITHOUT PREJUDICE** to the right of the defendants to move for judgment as a matter of law, under Federal Rule of Civil Procedure 50(a), upon completion of plaintiffs' case.

IT IS FURTHER ORDERED that that part of Count I¹ which asserts a claim against Officer Meoli and Officer McTear in their official capacities is **DISMISSED**.

BY THE COURT:

JAN E. DUBOIS, J.

¹The Court notes that Count I was not subject to Defendants' Motion.